ANTONY RATOS S/O DOMINGOS RATOS

v.

CITY SPECIALIST CENTRE SDN. BHD. (BERNIAGA SEBAGAI CITY MEDICAL CENTRE)

HIGH COURT MALAYA, KUALA LUMPUR
DATO' K.L. REKHRAJ JC
[WINDING-UP NO: D1-28-216-96]
9 AUGUST 1996

COMPANY LAW: *Contempt - Respondent seeking relief under s. 181 Companies Act 1965 - Prohibitory injunction granted against petitioner - Breach thereof - Winding-up petition filed by petitioner - Respondent's bank accounts frozen - Application for leave to commit petitioner and his Counsel for contempt allowed by learned Judicial Commissioner - Motion by petitioner for leave to commit applicants and JC for contempt - Whether proper.*

CIVIL PROCEDURE: *Contempt - Application to commit Judicial Commissioner and solicitors on advise of petitioner's Counsel - Statutory immunity of Judge - Section 14(1) Courts of Judicature Act 1964 - Application against JC subsequently withdrawn and apologies tendered - Whether sufficient to purge contempt - Whether petitioner's Counsel acted with malice - Whether petitioner and Counsel liable for contempt.*

On 31 January 1996 Dr. Leela Ratos and 5 others filed Petition No: D5-26-5-1996 at the High Court for relief under s. 181 of the Companies Act 1965 ("the D5 petition"). On 23 May 1996, after an *inter partes* hearing before Dato' Kamalanathan Ratnam, JC, the D5 petitioners obtained an interlocutary injunction against Anthony Ratos Domingo Ratos, the petitioner herein, restraining him from *inter alia* interfering in the affairs of City Specialist Centre Sdn. Bhd., the respondent herein.

Notwithstanding the said injunction, the petitioner herein, through his solicitors M/s. M.S. Murthi & Partners on 18 June 1996 caused the winding-up petition herein ("the D1 petition") to be filed. The D1 petition was served on the respondent on 21 June 1996 and advertised in the newspapers. The petitioners solicitors then served notice of the D1 petition on the respondent's bankers who thereupon froze the respondents' current accounts.

On 25 June 1996, the petitioners in the D5 petition filed an application for leave to commit the petitioner herein, his Counsel Mr. M.S. Murthi and another for contempt.

On 26 June 1996, Datin Saraswathy Devi and Mr. R.S. Sodhi, both advocates & solicitors, caused the filing of an *ex parte* notice of motion to strike off the D1 petition. The motion was heard before Dato' Kamalanathan Ratnam, JC who ordered the D1 petition to be struck out and granted leave to the D5 petitioners to commit the petitioner herein, his Counsel Mr. M.S. Murthi and another for contempt.

By a notice of motion dated 2 July 1996 the petitioners applied for leave to apply for an order of committal against Datin Saraswathy Devi, Mr. R.S. Sodhi and Dato' Kamalanathan Ratnam, JC on the grounds, *inter alia*:

(a) that on 26 June 1996 Datin Saraswathy Devi and Mr. R.S. Sodhi engaged in a Judge choosing exercise;

(b) that by filing an *ex parte* notice in the D5 petition to strike out the D1 petition which was pending before another Court the contemnors were undermining the public confidence in the due and proper function of his Majesty's Court and the integrity of the judicial process;

(c) that Datin Saraswathy Devi and Mr. R.S. Sodhi had caused the wrongful usurpation of the power and jurisdiction over the D1 petition by Dato' Kamalanathan Ratnam, JC;

(d) that Dato' Kamalanathan Ratnam, JC had usurped the power and jurisdiction of another Court and this had the intrinsic tendency to interfere with the due adminstration of justice and thereby brought this Majesty's Court into disrepute.

The above grounds were verified by affidavit as against the two advocates & solicitors but not against the learned JC. Thereafter, the two solicitors applied by a summon in chambers under O. 18 r. 19 of the Rules of the High Court for the petitioners' notice of motion to be struck out.

The Attorney-General Malaysia applied to be made a party by intervening in the proceedings for and on behalf of the JC.

On 24 July 1996 Mr. M.S. Murthi tendered an apology to the JC and sought leave to withdraw the application against the JC but proceeded with the application against the two solicitors.

At the adjourned hearing on 26 July 1996 Mr. M.S. Murthi informed the Court that on the authority of *Clarke and Others v. Chadburn & Others* [1985] 1 AER 211, brought to his attention by Mr. R.S. Sodhi, he had advised his clients to discontinue the proceedings but that his clients disagreed with his advice. He accordingly asked for a short adjournment to file his discharge papers.

Held:

[1] Mr. M.S. Murthi was the solicitor retained by Mr. Anthony Ratos to advise him. He, as solicitor, instead of taking his clients instructions had proceeded to advise Mr. Anthony Ratos to take these contempt proceeding against the Judicial Commissioner in the manner as he did; and thereby not only aided and abetted the contempt in the proceedings against the Judicial Commissioner Dato' Kamalanathan Ratnam, but had also played the role of a principal. It was too late in the day for Mr. Murthi to put a plea that he had now realised that it was wrong on his part to have misdirected himself and/or his client on the misconceived application. **This was an act done** clearly in retaliation to the other contempt proceedings taken against Mr. Ratos and Mr. M.S. Murthi on 25 June 1996 in the Court of the Honourable Judicial Commissioner and calculated to bring D5 Court and the said Judicial Commissioner into contempt by embarrasing or lowering his authority in the eyes of the world - bearing in mind, the records of these proceeding become case references for the future generation of lawyers.

[2] Mr. M.S. Murthi being learned in the law would or ought to have known that Judges enjoy a total statutory immunity/protection of the law against all or any prosecution to be commenced against them in the station of their office under s. 14(l) of the Courts of Judicature Act 1964. Thus, the application taken out by Mr. M.S. Murthi was an act done with malice calculated to intimidate the Judiciary and to bring the said Judicial Commissioner into contempt by ridiculing his authority in the station of His Office. It is not only an act of contempt but breeds contempt. Accordingly Mr. M.S. Murthi was in contempt of Court.

[3] Mr. Anthony Ratos s/o Domingos Ratos or his Counsel is to address this Court to **show cause as to why he and Mr. Anthony Ratos s/o Domingos Ratos** should not be committed to civil imprisonment for contempt of Court

[Contempt proceeding by petitioner discontinued. Petitioner and his Counsel found to be in contempt of Court. Costs to the Attorney-General to be taxed and paid personally by Mr. M.S. Murthi. Adjourned to 23 August 1996 for submissions on punishment for contempt]

Cases referred to:
Re: p.c. Sen. [1969] 2 SCR 649 ***(refd)***
R v. Gray [1900] 1 QBD ***(foll)***
Clarke & Others v. Chadburn & Others [1985] 1 AER 211 ***(refd)***

Legislation referred to:
Rules of the High Court, O. 18 r. 19, O. 32 r. 13(b), O. 52 r. 2(2)
Courts of Judicature Act 1964, ss. 14(1), 20

Other source referred to:
The Law of Contempt, Anthony Arlidge & David Eady, p. 91

For the petitioner - M.S. Murthi; M/s. Murthi & Partners and upon discharge Raja Abdul Aziz Addruse (G.K. Ganesan with him); M/s. Ganesan Ros Rokiah & Co.
For the Attorney-General's chambers - Abdul Ghani Patail (Vong Poh Fah with him)
In person - N. Saraswathy Devi (R.S. Sodhi with her)

JUDGMENT

K.L Rekhraj JC:

Before me there is a notice of motion (enclosure 10) dated the 2 July 1996, wherein the Counsel for the petitioner through his solicitors M/s. Murthi & Partners moves this Court that the petitioner be granted leave to apply to this Honourable Court for an order of committal against:

(i) Datin Saraswathy Devi - Advocate/Solicitor;

(ii) R.S. Sodhi - Advocate/Solicitor; and

(iii) Dato' Kamalanathan Ratnam - the Judicial Commissioner of the High Court, Kuala Lumpur;

and that the costs of the application be costs in the cause.

That the said notice of motion was supported by enclosure (8) a statement pursuant to O. 52 of r. 2(2) of the Rules of the High Court which reads:

> An application for such leave must be made *ex parte* to the Court, ... and must be **supported by a statement** setting out the name and description of the applicant, the name, description and address of the person sought to be committed and **the grounds** on which his committal is sought, and by an affidavit, to be filed **before** the application is made, verifying the facts relied on.

Mr. Anthony Ratos s/o Domingos Ratos, the petitioner herein gave the following grounds for committal as against Datin Saraswathy Devi and Mr. R.S. Sodhi:

(i) On the 26 June 1996 in the afternoon both Datin Saraswathy Devi and R.S. Sodhi were engaged in **Judge choosing exercise,** side stepping the due and proper procedure of the Judicial process of moving the High Court in an application by way of notice of motion;

(ii) Caused the filing of an *ex parte* notice of motion in case No. D5-26-5-96 for hearing before the Court of the Honourable Judicial Commissioner Dato' Kamalanathan Ratnam for the relief of striking off a winding-up petition No. Dl-28-216-96; and which petition was pending adjudication before another Court of Honourable Mr. Justice Dato' Syed Ahmad Idid bin Syed Abdullah Idid;

(iii) That this act of the contemptnors was calculated to undermine the public confidence in the due and proper function of His Majesty's Court and the integrity of the Judicial process;

(iv) That on the same date i.e. the 26 June 1996, at about 3.30 p.m. in the Court of the Judicial Commissioner, the said contemptnors made a **wilful representation**, that the Commercial Court of Dato' Kamalanathan - the said Judicial Commissioner had the power to "intervene" and adjudicate over the winding-up petition which was then pending before the other Court of Justice Dato' Syed Idid bin Syed Abdullah Idid; and that thereby caused the **wrongful usurpation** of the power and jurisdiction over the petitioner's winding-up petition by the said Judicial Commissioner;

(v) That this act had the intrinsic tendency **to interfere** with the administration of justice, and thereby bringing His Majesty's Court into disrepute;

(vi) That the said contemptuous **wrongfully applied** to strike off the winding-up petition No. Dl-28-216-96 with costs to be paid forthwith, thereby barring the petitioners constitutional right of access to His Majesty's Courts, which act has impaired the due course of Justice.

The grounds on which Dato' Kamalanathan Ratnam's committal was sought were:

(a) The Honourable Judicial Commissioner had on 26 June 1996 allowed the solicitors Datin Saraswathy Devi and Mr. R.S. Sodhi to side step the due and proper procedure of the judicial process of moving the High Court in an application by way of notice of motion and thereby **undermined the public confidence** in the due, and proper functioning of His Majesty's Court and the integrity of the judicial process;

(b) That the Honourable Judicial Commissioner had on 26 June 1996 had usurped the power and jurisdiction of another Court in case No. Dl-28-216-96 - which case was not before the said Judicial Commissioner for such adjudication, but was fixed for hearing before Mr. Justice Dato' Syed Idid's Court for 25 July 1996. That **this act on the part of the Judicial Commissioner had the intrinsic tendency to interfere with the due administration of Justice** and thereby brought His Majesty's **Court into disrepute**;

(c) That the Honourable Judicial Commissioner had on 26 June 1996 struck-off the winding-up petition No. Dl-28-216-96 and thereby **barred the petitioner from exercising his constitutional right of unhindered access to His Majesty's Court** and thereby **impaired the due course of justice.**

Under O. 52 r. 2(2); the above grounds and statements for committal were required to be verified by an affidavit, and Mr. Anthony Ratos did proceed to do so by enclosure (7); against the solicitors only; but for reasons best known to the petitioner and/or to his solicitors, failed to depose the verification against the said Judicial Commissioner.

When this matter first came up before me in chambers on 15 July 1996, on an intervener application by the Attorney-General Malaysia, to be made a party by intervening in the proceedings for and on behalf of the Judicial Commissioner; I had taken the liberty to bring this serious incurable irregularity

to the attention of the petitioners' solicitors; as without any verifications of those statements against the Judicial Commissioner; the defect prevented the cause of action as being properly brought before the Court; but the said Counsel discounted it as a curable irregularity; and proceeded to consent to the application of the Attorney-General Malaysia to intervene. Mr. M.S. Murthi was directed to produce to Court an affidavit of service of the *ex parte* process made on the Judicial Commissioner at his residence, through a courier service; when in fact the said service of process could have been **personally** made at the Court premises and this procedure adopted will show the intentions of malice and malignancy on the part of the solicitors for the petitioner. To date no such affidavit has been produced to the Court. The hearings in chambers were then adjourned to 24 July 1996 into open Court for the hearing of enclosure (10) notice of motion for leave to commit and enclosure (12) a summons in chambers filed by the two solicitors Datin Saraswathy Devi and Mr. R.S. Sodhi under O. 18 r. 19 of the Rules of High Court for an order:

(a) That the Notice of Motion dated the 2 July 1996 be struck-off on the grounds:

(i) It discloses no reasonable cause of action;

(ii) That the said Notice of Motion is scandalous, frivolous and vexatious;

(iii) It is otherwise an abuse of the process of Court.

This summons in chambers was supported by their affidavit dated 6 July 1996; the salient paragraphs to better understanding of the history of this episode are identified and read as follows:

Paragraph 5

I state that on 31 January 1996; six (6) persons namely Dr. Leela Ratos, Anthuan Domnil Anant Ratos, Anthea @ Anita Francesca Ratos, Ari Arun Ratos, Anil Andre Ratos and Antonia Ratos has filed a petition in the High Court of Malaya at Kuala Lumpur (for a relief under s. 181 of the Companies Act 1965) *vide* petition No. D5-26-5-1996 (hereinafter called the D5 petition).

Paragraph 7

I state that on 23 February 1996 the petitioners in D5 petition filed a summons in chambers for an injunction against Anthony Ratos s/o Domingos Ratos and on **23 May 1996** upon *inter partes* hearing the Honourable Judge (Judicial Commissioner Dato' Kamalanathan Ratnam) granted an interlocutory **injunction** against Anthony Ratos s/o Domingos Ratos **restraining him from *inter alia* interfering in the affairs of City Specialist Centre Sdn. Bhd.** (the respondents in the D5 petition).

Paragraph 8

In breach of the terms of the said injunction the said Anthony Ratos s/o Domingos Ratos through his solicitors M/s. Murthi & Partners did on **18 June 1996** caused a winding-up petition identified as Dl-28-216-96 (hereinafter called the **Dl petition**) to be **filed**.

Paragraph 9

That Anthony Ratos s/o Domingos Ratos caused the Dl-petition to be **served on the respondents** (CMC) **on 21 June 1996** (Friday at 4.10 p.m.) and also caused it to be **advertised** in the newspapers **on 22 June 1996.**

Paragraph 10

I aver that immediately Anthony Ratos s/o Domingos Ratos through his solicitors caused the notice of the Dl-petition served on the Bankers of he respondent company - namely Chung Khiaw Bank (M) Bhd. and the Standard Chartered Bank (M) Bhd. thereby causing the respondents current accounts with the bank to be frozen ...

Paragraph 11

I aver that Anthony Ratos s/o Domingos Ratos has disobeyed the injunction dated 23 May 1996 granted by the Honourable Judicial Commissioner Dato' Kamalanathan Ratnam under petition No. D5-26-5-96; and thus an interlocutory application had to be made to the D5 Court (presided by Dato' Kamalanathan Ratnam) to strike out the Dl-winding-up petition.

Paragraph 12

On 25 June 1996, the petitioners in the D5 petition filed an application for leave to commit Anthony Ratos s/o Domingos Ratos and his Counsel Mr. M.S. Murthi and another to prison for their contempt ... and on 26 June 1996 the Honourable Judicial Commissioner (D5 Court) granted to the said petitioners leave to commit.

Paragraph 14 & 15

That this notice of motion dated 2 July 1996 and the documents filed in support of it are scandalous, frivolous, vexatious and an abuse of the process of Court; and it is plain and obvious that the notice of motion dated 2 July 1996 is unsustainable and discloses no reasonable cause.

On 24 July 1996, at the continued hearing, the committal proceedings against the said Honourable Judicial Commissioner Dato' Kamalanathan Ratnam took a sudden twist when Mr. M.S. Murthi stood to address the Court:

This application by Mr. Anthony Ratos for committal proceedings against the Honourable Judicial Commissioner, Dato' Kamalanathan Ratnam also known as Dato' R.K. Nathan **was made on my advice** as a solicitor for Mr. Ratos. However, it has now been shown to us that we were wrong and misdirected ourselves both in law and in fact in making this application under this notice of motion. The applicant, Mr. Anthony Ratos and myself recognise that **this application is**

misconceived and we **accept the error in which we fell into**; and sincerely regret the cause of action as taken by us. Both the applicant and myself wish to tender our sincere and unreserved apology to this Honourable Court and to the Judicial Commissioner for any aspersions cast on their integrity. We also sincerely regret and wish to apologise for the anxiety and the mental anguish that may have been caused to the Judicial Commissioner and to his family as a result of these contempt proceedings. It would also be in order at this point for us to tender our apology to the Judiciary at large. On that note I seek leave to withdraw the application against the Honourable Judicial Commissioner.

As for the contempt proceedings against Datin Saraswathy Devi and Mr. R.S. Sodhi, I am constrained to proceed with the application;

and proceeded to submit the test of the law as set out by Lord Diplock in the case of *"The Law of Contempt"* by Anthony Arlidge and David Eady, at page 91:

> Lords Diplock and Simon used a different approach in which Lord Morris also concurred. In their view it was a contempt to hold a litigant up to public obloquy in a manner calculated to deter him from exercising his established legal rights or to usurp the functions of the Courts. Lord Diplock put it thus:
>
> > The due administration of justice requires: **first** that all citizens should have unhindered access to the constitutionally established Courts of criminal or civil jurisdiction for the determination of disputes as to their legal rights and liabilities; **secondly**, that they should be able to rely upon obtaining in the Courts the arbitrament of a tribunal which is free from bias against any party and whose decision will be based upon those facts only that have been proved in evidence adduced before it in accordance with the procedures adopted in Courts of law; and **thirdly** that, once the dispute had been submitted to a Court of law, they should be able to rely upon there being no usurpation by any other person of the function of that Court to decide it according to law. Conduct which is calculated to prejudice any of these three requirements or to undermine the public confidence that they will be observed is contempt of Court ...

and as laid out in the decision of in ***Re: p.c. Sen.*** **[1969] 2 SCR** page 649 at 653 paragraph F. "The law relating to contempt of Court is well settled. **Any act done** or writing published which is **calculated to bring a Court** or **Judge into contempt,** or, to lower his authority, or to **interfere with the due course of Justice** or the lawful process of the Court **is a contempt of Court**: *R v. Gray* [1900] 2 QBD at page 40.

Mr. Murthi then proceeded at great length to explain how distribution of cases among the Judges can only be done by the Chief Judge under s. 20 of the Judicature Act and/or under the Practice Directions issued from time to time **or** by an application for consolidation; and the instances when *ex parte*

application can properly be made by motion; and that O. 18 r. 19 Rules of the High Court was not one such application that could have been proceeded in the manner as the solicitors did *ex parte*. And as none of these requirements were satisfied; and there being no such application, **Dato' R.K. Nathan's Court D5 had no power to interfere or intervene in a matter which was lawfully assigned and pending adjudication in the other Court.**

At this juncture, I interrupted Mr. Murthi and asked him whether he was seriously proceeding when he had not even filed any affidavit in reply to enclosure (11) the affidavit in support of O. 18 r. 19 application to strike off the notice of motion; to which he replied - "I agree that I have not put in an affidavit in reply to enclosure (11); but I have given **notice to the other side** under O. 32 r. 13(b). **The Court is not entitled to that affidavit because the Rule is silent and not clear.** At this stage, the case was adjourned to 26 July 1996 for continued hearing.

On 26 July 1996

At the adjourned hearing Mr. M.S. Murthi informed the Court:

> Mr. R.S. Sodhi; one of the contemptnor had produced to me an authority: *Clarke & Others v. Chadburn & Others* [1985] 1 AER p. 211 where on a disobedience to an injunction, Justice Robert Megarry V.C. had held: 'That an act done in wilful disobedience of an injunction or Court Order was not only a contempt but also an illegal and invalid act which could not, therefore effect any change in the rights and liabilities of others.' "It follows therefore that Mr. Sodhi's honest and reasonable belief in good faith in having proceeded thus in filing the striking out of the Dl-petition in D5 Court before the Honourable Judicial Commissioner, Dato' R.K. Nathan was in order. However, I do not agree in entirety the legal contention; but **I do accept that holding such a belief will effect the substratum of the foundation to these contempt proceeding**. **I have** accordingly on the strength of this Authority **advised my clients that all further proceedings be discontinued**; **but my client disacrees with my advice** and now wishes to retain other Counsels to further proceed. I ask for a short adjournment to file my discharge papers.

Mr. M.S. Murthi is the solicitor retained by Mr. Anthony Ratos to advise him. He, as solicitor, instead of taking his clients instructions had proceeded to advise Mr. Anthony Ratos to take these contempt proceedings against the Judicial Commissioner in the manner as he did; and has thereby not only aided and abetted the contempt in the proceedings against the Judicial Commissioner Dato' Kamalanathan Ratnam, but has also played the role of a principal actor in the "Wayang Kulit" show. It is now too late in the day for Mr. Murthi to put a plea that he has now realised that it was wrong on his part to have misdirected himself and/or his client on the misconceived applications. To me **this was an act done** clearly in retaliation to the other contempt proceedings taken against Mr. Ratos and Mr. Murthi on 25 June 1996 in the Court of the Honourable Judicial Commissioner and calculated to bring D5 Court and the said Judicial Commissioner into contempt by embarrasing or lowering his

authority in the eyes of the world - bearing in mind, the records of these proceedings become case references for the future generation of lawyers. To me, Mr. Murthi proceeding as thus, in advising his client, has not only exceeded all the bounds of limitations showing his personal malignancy, but was an act of scurrilous abuse intended to ridicule and embarrass the Administration of Justice. Mr. Murthi being learned in the law would or ought to have known that the Judges of His Majesty the Yang di-Pertuan Agong enjoy a total statutory immunity/ protection of the law against all or any prosecution to be commenced against them in the station of their office under s. 14(l) of the Courts of Judicature Act 1964 which reads:

> No Judge or other person acting Judicially shall be liable to be sued in any civil court for **any act done** or ordered to be done by him in the discharge of his Judicial duty, whether or not within the limits of his jurisdiction, nor shall any order for costs be made against him, provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of.

I have given some serious considerations, **to this application** taken out by Mr. Murthi and am lost; but come to the only one conclusion that it was an act done with malice calculated to intimidate the judiciary and to bring the said Judicial Commissioner by ridiculing his authority in the station of His Office. It is not only an act of contempt but breeds contempt; and I accordingly hold Mr. M.S. Murthi in contempt of Court; and invite him and the petitioner, Mr. Anthony Ratos s/o Domingos Ratos or his Counsel to address this Court **to show cause as to why he and Mr. Anthony Ratos s/o Domingos Ratos** should not be committed to civil imprisonment for contempt of Court.

As there was an admission by Mr. Murthi that on the authority of *Clarke & Others v. Chadburn & Ors.* [1985] 1 AER p. 211, and in view of that honest belief that the substratum of the foundation in the proceedings had collapsed, the contempt proceedings against the two solicitors Datin Saraswathy Devi and Mr. R.S. Sodhi could not be proceeded and rightly discontinued upon the advise of Raja Abdul Aziz Addruse and as such those proceedings are dismissed with costs.

I also order costs to the Attorney-General, who were forced to intervene on the proceedings taken against the Judicial Commissioner and such costs to be taxed and paid personally by Mr. M.S. Murthi.

The rest of the proceedings on the show cause are adjourned to 23 August 1996, and I invite the Bar Council Malaysia and/or the Kuala Lumpur Bar Committee to assist the Court in deciding on an appropriate punishment; and my invitation to the Bar, is to give them the opportunity to guide this Court of an appropriate sentence to me of their member in the profession. I must

also admit that I am to be, guided by the only known recent decision in the Malaysian Court where the late Mr. Karam Singh - may he peacefully rest in heavenly abode - was given three months for a similar contempt.

Court is adjourned to 23 August 1996 for submission by Counsels on the appropriate punishment for contempt of Court.

Reported by Jasmesh Kaur